

STATE OF MICHIGAN
COURT OF APPEALS

MARK CARTER, a Minor, by his Next Friend
ANTOINETTE GOUCH,

UNPUBLISHED
August 12, 2003

Plaintiff-Appellant,

v

No. 237658
Wayne Circuit Court
LC No. 00-009004-NI

DETROIT BOARD OF EDUCATION, CITY OF
DETROIT, DETROIT POLICE DEPARTMENT,
WAYNE COUNTY ROAD COMMISSION,
STATE OF MICHIGAN, and MICHIGAN
DEPARTMENT OF TRANSPORTATION,

Defendants-Appellees.

Before: Jansen, P.J., and Neff and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition of her negligence claim against the city of Detroit¹ under the highway exception to governmental immunity, MCL 691.1402(1). We affirm.

I

Plaintiff filed this action for damages after her son Mark Carter was hit by a car while crossing Mack Avenue in Detroit on January 13, 1999, when leaving his elementary school at the end of the school day. Although the Detroit Police Department had a school crossing guard at an adjacent intersection, no guard was assigned to the location where Mark was crossing, which was not a designated school crossing. Plaintiff alleged that students regularly crossed at the location where Mark was hit and that defendant was negligent in failing to provide a crossing guard at

¹ The complaint filed by plaintiff was amended to delete references to the Michigan Department of Transportation and to add the city of Detroit. The claims against the Detroit Board of Education, the Detroit Police Department, and the Wayne County Road Commission were dismissed and are not before this Court. Throughout this opinion, the city of Detroit will be referred to as defendant.

that location. The trial court granted summary disposition for defendant on the basis of governmental immunity, concluding that the highway exception to governmental immunity did not include a duty to provide a school crossing guard.

II

Plaintiff argues that summary disposition was improper and the trial court erred in concluding that the highway exception to governmental immunity does not apply to a local municipality that fails to post a school crossing guard at an intersection despite its knowledge of a potentially hazardous condition for schoolchildren. We disagree.

The trial court granted summary disposition based on governmental immunity, pursuant to MCR 2.116(C)(7). Summary disposition is proper when a claim is barred because of immunity granted by law. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). When considering a motion brought under MCR 2.116(C)(7), we consider the affidavits, pleadings, and other documentary evidence filed or submitted by the parties. *Patterson v Kleiman*, 447 Mich 429, 433; 526 NW2d 879 (1994). The contents of the complaint must be accepted as true unless specifically contradicted by the affidavits or other appropriate documentation submitted by the movant. *Id.* at 434 n 6; *Sewell v Southfield Pub Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998).

Tort immunity is broadly granted to governmental agencies by MCL 691.1407(1), which provides:

Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

The definition of “governmental agency” under subsection 1 above includes municipal corporations such as defendant. *Weaver v Detroit*, 252 Mich App 239, 243; 651 NW2d 482 (2002) (hereafter *Weaver II*); *Weakley v Dearborn Heights (On Remand)*, 246 Mich App 322, 325; 632 NW2d 177 (2001).

Plaintiff alleged that her claim falls within the highway exception to governmental immunity, MCL 691.1402(1), which provides, in part:

[E]ach governmental agency having jurisdiction over any highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency... . The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not

include sidewalks, trailways, crosswalks or any other installation outside of the improved portion of the highway designed for vehicular travel.

We find no error in the trial court's conclusion that defendant's duty to maintain the highway in reasonable repair does not include a duty to provide a school crossing guard at the intersection at issue.

An action may not be maintained under the highway exception unless it is clearly within the scope and meaning of MCL 691.1402(1). *Weaver II, supra* at 245. In *Weaver II*, this Court held that, "as with traffic signals and signs, . . . the plain language of the statute [MCL 691.1401(e)] does not support the conclusion that streetlight poles are included within the definition of the term 'highway.'" *Weaver II, supra* at 245, citing *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 180, 182 & n 37; 615 NW2d 702 (2000).

Consistent with the holding in *Weaver II*, a determination must be made regarding whether the defect complained of is clearly implicated within the definition of "highway." *Hatch v Grand Haven Charter Twp*, 461 Mich 457, 461-464; 606 NW2d 633 (2000); *Weakley, supra* at 326. The basic principle underlying this analysis is that "the immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed." *Nawrocki, supra* at 158.

MCL 691.1401(e) provides:

"Highway" means a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles.²

Here, as with traffic signals and signs, the plain language of the statute does not support the conclusion that school crossing guards are included within the definition of the term "highway." *Weaver II, supra* at 245. Accordingly, the highway exception is inapplicable to the facts of this case, and the trial court properly granted summary disposition for defendant on the basis of governmental immunity.

Affirmed.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Kirsten Frank Kelly

² The definition has been amended since the time of the incident in this case, *Weaver, supra* at 245 n 4; however, the amendment is not at issue.